

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PATRICE PHILSON a/k/a JUSTICE
RASIDEEN ALLAH,

Petitioner,

v.

MICHELE RICCI, PRISON
ADMINISTRATOR-NEW JERSEY STATE
PRISON,

Respondent.

OPINION and ORDER

Civ. No. 98-2249 (WHW)

Walls, Senior District Judge

In October 1990, a jury found petitioner guilty of first degree murder and weapons charges in New Jersey Superior Court. Petitioner's conviction was affirmed on appeal, and his petition for post-conviction relief in state court was denied.

Petitioner filed a habeas petition in the District Court of New Jersey on May 19, 1998, alleging ineffective assistance of counsel. (ECF No. 1.) This motion was denied. (ECF No. 11.) Allah then filed a motion for reconsideration, and on August 24, 2001, this Court denied petitioner's motion. (ECF No. 13.) In December 2003, the Third Circuit affirmed. (ECF No. 20.)

In 2007, petitioner filed a Rule 60(b) motion before this Court. (ECF No. 24.) On August 13, 2007, this Court denied Allah's motion as an impermissible successive habeas petition. (ECF No. 25.) On August 6, 2008, Allah filed a motion for reconsideration concerning

NOT FOR PUBLICATION

the denial of his Rule 60(b) motion. (ECF No. 30.) This Court denied this motion on March 20, 2009. (ECF No. 31.) Allah did not appeal.

Claiming that he never received notice of the Court's March 20, 2009, opinion, petitioner filed a motion for leave to reopen the time to file an appeal. (ECF No. 33.) Because petitioner's request for additional time was clearly outside the filing window it was denied.

Allah then filed a motion for relief from this Court's October 6, 2010, order and a motion requesting leave to reopen the time to file an appeal pursuant to Fed. R. Civ. P. 60(a) on January 4, 2011. (ECF Nos. 39, 40.) Because Allah's motion was still outside of the filing period provided in Federal Rule of Appellate Procedure 4(a)(6)(A), his motion was denied. (ECF No. 43.) Allah now seeks an extension of time for filing a notice of appeal under Fed. R. App. P. 4(a)(5). He filed this motion within 30 days after the expiration of time prescribed by Fed. R. App. P. 4(a)(1).

A petitioner requesting leave to file a notice of appeal after the applicable time limit must show either excusable neglect or good cause. Fed. R. App. P. 4(a)(5). “[T]he ‘good cause’ prong is reserved for events over which the filing party has no control,” while under the “excusable neglect” prong the party must show that he “acted in good faith to conform his or her conduct in accordance with the rule, but as the result of some minor neglect, compliance was not achieved.” Kanoff v. Better Life Renting Corp., 350 F. App'x 655, 657 (3d Cir. 2009).

Allah claims that he could not meet the proscribed deadline because his “closed custody unit was locked down” the two weeks before he filed his motion for an extension of time, which prevented him from obtaining the assistance of a paralegal. (Pet. Br. at 2.) Although Allah proceeds pro se, “*pro se* litigants are required to inform themselves of the rules and abide by them.” In re Genesis Health Ventures, Inc., No. 00-2692, 2007 WL 1876384, at *2 (D. Del. June

NOT FOR PUBLICATION

24, 2007) (citing In re Am. Metrocomm Corp., 196 F. App'x 86, 87-88 (3d Cir. 2006)). In addition, Allah has personal experience in taking appeals to the Third Circuit. He is familiar with the deadline to file a notice of appeal and the consequences for failing to comply with it. A notice of appeal merely states that a party plans to take an appeal from a specific judgment. There is no legal research necessary. Allah's decision to wait for the assistance of a paralegal does not establish that there was good cause for his failure to file. Because Allah has not shown "some reasonable basis" for his failure to file, he has not demonstrated excusable neglect either. Roberts v. United States, 298 F. App'x 196, 198 (3d Cir. 2008).

On June 1, 2001, Allah then filed a motion to file his appeal in forma pauperis. (ECF No. 47.) Because Allah may not file an appeal, this motion is denied.

It is, on this 28th day of June, 2011:

ORDERED that Defendant's Motion for an Extension of Time to File a Notice of Appeal is **DENIED**,

IT IS FURTHER ORDERED that Defendant's Motion to File his Appeal In Forma Pauperis is **DENIED**.

s/ William H. Walls

United States Senior District Judge